Supreme Court, U.S.
FILED
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MICHAEL RODAK, JR., CLERK

80-1380

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No.

DONALD SCHANBARGER,

Petitioner,

v

POLICE CHIEF OF THE VILLAGE OF MASSENA, NEW YORK, Dale Wright,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS OF THE SECOND CIRCUIT

Donald Schanbarger

Pro se

Salem, New York 12865

November 28, 1980

QUESTIONS PRESENTED

1. Whether injunctions must be issued by a federal District Court to implement rights under the 10th and or 14th amendments to the federal Constitution where there is no practial demonstrable remedy to a person so deprived of assurted rights such as to be left alone, refusal to answers questions or arrest upon grounds to be developed by police custom with impunity, when oomplaint is made by a person that has suffered denial of such rights? (In Complaint par. 26)

2. Whether failure of a federal District Court to issue injunctions against police customs of violations of the 10th and/or 14th Amendments to the U.S. Constitution for which there is no remedy, is approval of any such violations when complaint is made by a person so deprived and left

without any remedy? (In Complaint par. 26)

3. Whether the 10th & 14th amendments to the federal constitution requires police to establish that a person is a wanted person or if a person must establish to police that he is not the wanted person? (In Complaint par. 26)

4. Whether it is necessary to allege "that any action is currently being taken by the defendant with respect to the plaintiff" or "that any future action is being threatened" when the 42 USC 1983 complaint assurts violation of the 6th, 7th, 10th & 14th Amendments to the federal Constitution as a notion of state law, usage, custom, statutues & regulation, and that he and others will receive penalty for engaging in prohib-

ited conduct as a concept of their employment, alleges plaintiff was arrested, jailed and attempted prosecution against him for failure to supply identification and in June 1979 the defendant office-holder said to the plaintiff in a court proceeding he approved of the holding and charge against the plaintiff at the time, and under the like conditions the Massena Police would do the same again?

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The petitioner Donald Schanbarger prays that a writ of certiorari issue to review the Order of the United States Court of Appeals of the Second Circuit entered in the office of its Clerk on September 18, 1980.

OPINION BELOW

U.S. District Court for the Northern District of New York, appears in the Appendix 1-6 hereto. Second Circuit Court of Appeals of the United States affirmed the District Court by order that appears in the Appendix 7-9 hereto without opinion.

JURISDICTION

The September 18, 1980 Order of the U.S. Court of Appeals of the Second Circuit affirmed the February 21, 1980 order of the U.S. District Court for Northern New York. Assurted in the complaint are Title 42 U.S.C. Sec. 1983, Title 28 U.S.C. Sec. 1345 (3&4), & the U.S. Constitution's Art. 3 Sec. 2, personal rights clause of the 10th amendment, equal protection, prohibited state conduct, & due process clauses of the

14th amendment, right to be informed of nature & cause of accusation clause of the 6th amendment, 7 right to be secure in person & effects against unreasonable searches & seizures claim of the 14th. Petition is under 28 USC Section 1254(1) filed within 90 days of Order.

QUESTIONS PRESENTED

(# 1-4 used at Court of appeals)

(# 4 used at District Court at opposition to dismissal of complaint)

1. Whether injunctions must be issued by a federal District Court to implement rights under the 10th and/or 14th amendments to the federal Constitution where there is no practial demonstrable remedy to a person so deprived of assurted rights such as to be left alone, refusal to answer questions or arrest upon grounds to be developed by police custom

with impunity, when complaint is made by a person that has suffered denial of such rights? (In Complaint par. 26)

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4. Whether it is necessary to allege "that any action is currently being taken by the defendant with respect to

the plaintiff" or "that any future action is being threatened" when the 42 USC 1983 complaint assurts violation of the 6th, 7th, 10th & 14th Amendments to the federal Constitution as a notion of state law, usage, custom, statutues & regulation, and that he and others will receive penalty for engaging in prohibited conduct as a concept of their employment, alleges plaintiff was arrested, jailed and attempted prosecution against him for failure to supply identification and in June 1979 the defendant office-holder said to the plaintiff in a court proceeding he approved of the holding and charge against the plaintiff at the time, and under the like conditions the Massena Police would do the same again?

STATEMENT OF THE CASE

Plaintiff was arrested by Massena Police around 2 a.m. of October 31, 1977. He was jailed and received attempted prosecution upon the charge of obstructing government administration. He was taken to arraingment upon the charge and was not given a copy of the charge, but the charge was dismissed, and he was released around 11 a.m.

Plaintiff brought a money action for constitution violation against Massena, N.Y. and some members of the Massena Police. At the above trial (1979) it was the position of the police that the plaintiff fit the discription of an escaped mental patient and for failure to supply identification he was arrested and held upon their charge. After around one hour of his arrest the police were ad-

vised that the escaped mental patient had been found. Around one hour after his arrest the police sent out a telatype message trying to find out who he was. A copy of the telatype message and arrest card about the plaintiff were lost by the police. A open court (1979) position of the Massena police chief was that under the same events the police would engage in the same conduct again. The police chief has in the past handed out cards to his police stating that police can not require people to answer questions.

Plaintiff now brings action for injunction against the Massena police against repetitive action against him or anyone, and that the district court appoint an administrator to over see the chief of police, for which the aforsaid jury (trial) found the Massena police and

its chief did not know their actions were illegal, thus upon the federal case law that there can be no cause of action against police if they did not know their action were unconstitutional. The jury was told by the trial judge that the plaintiff did not need to answer any questions of the police.

The present complaint assurts that plaintiff has no remedy against futher illegal actions of the Massena police.

REASONS TO GRANT WRIT

1. Notwithstanding their oath of office, police, public prosecutors and judges laugh at constitutions (Peo. v McMurty, 64 Mis 2d 163) notwithstanding their oath of office and that a subject of criminal action need not answer questions (Peo. v Rutigliano, 261 NY 103

& Maranda v Arizona. 384 US 636). The trend of this court and courts in general to support assorted gamemenship that can only result in procedure to incourage and permit police as a concept of their employ ment to deprive people of their constitutionally protected conduct thru assorted ploys, notwithstanding this courts finding that police must obey the law (Spano v N.Y. 360 US 132, 156) and the New York finding that the administration must be beyond suspicion of reproach (Peo. v Savvides, 154 NY2d 136).

The ploys of police are the subject of constant petitions to this court. Police ploys and failure for people to prevail over them in court can be found in N.Y. Peo. v McMurty and the federal 1967 The Police Task Force Report which also contains the statement that "If

citizens show disrespect for an officer, such conduct, alone, while reprehensible, dosenot justify making or taking other action" (p180). "THE POLICE" fails to explain why police engaging in the practices should be afforded respect.

2. The thrust of the case law in the United States is that people must suffer any damage police care to cause and then collect damages. If a remedy is that which must be obtained thru a legal proceeding on an individual basis, the remedy is that governed by less then chance and waste. The Texas Sam Huston years ago made the observation that a person should suffer any then to go to court. The same reasons apply which seem to be inherent to any court system. Courts function best as an instrument of damage. One large scale example is failure of courts

to protect the rights of jail inmates. jail upheavals seem to follow inmates court case being dismissed without relief. The reason for that is not that those that believe the unbelieveable will do bad things to others, but that of our side vs. the other side. That is the common thread found in the courts in this country, whether criminal or civil as an example the milking of estates of deceased with the bottom line of judicial approval. Injunctions for jails must be with a court appointed overseer or the inmates must be forever going to court to inforce it whether Jacksonville (FL), Duchess County (NY) or any place else. The thought is that government agents should be guided by their conscience.

3. This is a case where a civil case

in the past resulted in a jury finding of no cause of action upon a good faith defence. There clearly is no remedy against wrongful police conduct of which there is clear evidence in this csse. There must be deemed that the police of Messena do not know that police can not require a person to answer questions or to supply identification, and that they will continue to ingage in such prohibited conduct. If on going illegal acts of police do not result in recovery of damage as a result of oourt rules, a court should not find res judicata as a bar to equitable relief as to futher acts.

It is a matter of settled law that police can not require a suspect of any kind to answer any question or should be charge for failure to answer any question, that police refuse to understand.

4. Any injunction must by its nature apply to all people, for if this petitioner must supply identification to assurt constitutionals rights then there would be in effect a court order to give up a right to assurt a right. Such a notion fails to uphold the constitution. The problems of Ms. Mapp shows hasards.

5. There are no serious reasons as to why the Massena police should not be barred from questioning anyone or making an arrest until a court appointed overseer is in place seeing to it that the practice of ignorance of police prohibited conduct is stopped. Should there be any notion that the Massena police can do something that the people around there cannot do for them self, there are N.Y. State police to do those acts which may and may not be lawful, as well as County

sheriff's force and town constable, however for such a conclusion there should be a finding that police are a different kind of people then found in the general population of Massena.

6. Notwithstanding settled case law, for all practical purpuse constutional rights are so elusive that they are in substance a matter of discretion, which clearly fall within the denial of equal rights, protection and treatment supported by federal and state courts. That is "law and order" is an opposite code.

C O N C L U S I O N

A writ of certiorary should issue to review the order of the second circuit U.S. Court Court of Appeals.

Submitted by,

Donald Schanbarger

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

DONALD SCHANBARGER,

Plaintiff,

-against- 79-CV-803

POLICE CHIEF OF THE VILLAGE OF MASSENA, NEW YORK, Dale Wright,

Defendant.

APPEARANCES: OF COUNSEL:

DONALD SCHANBARGER

Pro Se

Salem, New York 12865

CARTER, CONBOY, BARDWELL, DIANE BRESEE

CASE & BLACKMORE

Attorneys for Defendant

40 Steuben Street

Albany, New York 12207

JAMES T. FOLEY, D. J.

MEMORANDUM-DECISION and ORDER

Plaintiff, a persistent civil rights litigant in this Court, filed a pro se complaint of 28 allegations, paying the filing and service of process fees. The named single defendant is the police chief of the Village of Massena, and jurisdiction is based upon 42 U.S.C. Sec. 1983 and 28 U.S.C. Sec. 1343, statutes often invoked for pro se claims of the plaintiff. The defendant moves to dismiss the complaint for failure to state a claim for which relief can be granted.

In the present complaint, plaintiff seeks only specific equitable relief, but such relief is of an extreme and extraordinary nature. It is for a "prohibition or injunction" order that would enjoin members of the police department of Massena under the defendant from stop-

ping, questioning and arresting "anyone" on its public streets. The limitations sought in this respect are detailed, with the exceptional restraint that the defendant and the police officers be enjoined from any arrest until a person appointed by this court is empowered to direct and supervise the defendant in the discharge of his duties in this respect.

Plaintiff had his own actual involvement with the questioning and arrest procedures of the Massena police department. He sued pro se in this court for eleven million dollars punitive and eleven million dollars compensatory damages for unconstitutional violation and deprivation alleged to have occurred during his questioning and arrest in Massena. Schanbarger v. Dale Wright & The Village of Massena, New York, 78-CV-

20, N.D.N.Y.

The case was consolidated for trial with another Schanbarger case, 78-CV-27, and was tried for five trial days before District Judge Lloyd F. MacMahon in Auburn, New York. The plaintiff tried it himself, and the defendants were represented by an eminent trial attorney. The judgment was one of No Cause of Action.

The plaintiff now seeks to protect the general public from the unconstitutional experience he still claims to have suffered on the streets of Massena. No matter the great liberality the Court of Appeals, Second Circuit, requires for the treatment of pro se civil rights complaints, it does not seem that policy would allow the filing of money damages claims first, and then if unsuccessful a

followw-up claim for equitable relief. See Escalera v. New York City Housing Authority, 425 F.2d 853, 857 (2d Cir.), cert. denied, 400 U.S. 853 (1970); see Heimbach v. Village of Lyons, 597 F.2d 344, 346 (2d Cir. 1979). Common sense and judgment should be allowed to enter to some degree in the analysis and perception of the constitutional validity of such claim that in many instances may be discerned from the reading of the complaint.

There are a number of reasons that support the dismissal of this complaint. The doctrine of res judicata is fully applicable in actions brought under 42 U.S.C. Sec. 1983. Preiser v. Rodriguez, 411 U.S. 475, 497 (1973). Delicate and serious quesbions as to whether any injuctions should issue from a federal

court restraining police from conduct that might be lawful. Allee v. Medrano, 416 U.S. 802, 813-816 (1974). Equitable restraint doctrine of Federal courts applies. Younger v. Harris, 401 U.S. 37 (1971); Huffman v. Pursue, Ltd., 420 U.S. 592 (1975). Finally, and most important, plaintiff has no standing under established federal principles. Warth v. Seldin, 422 U.S. 490, 498-502 (1975); Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26 (1976); Duke Power Co. v. Carolina Env. Study Group, 438 U.S. 59, 78-81 (1978).

The motion is granted and the motion is dismissed.

It is so Ordered.

Dated: February 21, 1980

Albany, New York

/s/ James T. Foley

UNITED STATES DISTRICT JUDGE

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

UNITED STATES COURT OF APPEALS

for the SECOND CIRCUIT Cal #74

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Court House, in the City of New York, on the 18th of September, one thousand nine hundred and eighty.

Present:

HONORABLE WILFRED FEINBERG

Chief Judge

HONORABLE J. EDWARD LUMBARD

HONORABLE JAMES L. OAKES

Circuit Judges

UNITED STATES COURT OF APPEALS

FILED SEP 18 1980

A. DANIEL FUSARO, CLERK

SECOND CIRCUIT

DONALD SCHANBARGER,

Plaintiff-Appellant,

- against - 80-7276

DALE WRIGHT, POLICE CHIEF OF THE VILLAGE OF MASSENZ, NEW YORK,

Defendant-Appellee,

Appeal from the United States District Court for the Northern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Northern District of New York, and was submitted by appellant pro se and by counsel for

appellee.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is AFFIRMED on the opinion of Judge Foley, dated February 21, 1980.

/s/ Wilfred Feinberg
WILFRED FEINBERG, Chief Judge

/s/ J. Edward Lumbard
J. EDWARD LUMBARD

/s/ James L. Oakes
JAMES L. OAKES

Circuit Judges